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Resilience through Interlinkage: The Green Climate Fund and Climate Finance Governance

ABSTRACT

The Green Climate Fund (GCF) is a significant and potentially innovative addition to UNFCCC frameworks for mobilizing increased finance for climate change mitigation and adaptation. Yet the GCF faces challenges of operationalization not only as a relatively new international fund but also as a result of US President Trump's announcement that the United States would withdraw from the Paris Agreement. Consequently the GCF faces a major reduction in actual funding contributions and also governance challenges at the levels of its Board and the UNFCCC Conference of the Parties (COP) to which it is ultimately accountable. This article analyzes these challenges with reference to the GCF's internal regulations and its agreements with third parties to demonstrate how exploiting design features of the GCF could strengthen its resilience in the face of such challenges. These features include linkages with UNFCCC constituted bodies, particularly the Technology Mechanism, and enhanced engagement with non-Party stakeholders, especially through its Private Sector Facility. The article posits that deepening GCF interlinkages would increase both the coherence of climate finance governance and the GCF's ability to contribute to ambitious climate action in uncertain times.

Key Policy Insights

- The Trump Administration's purported withdrawal from the Paris Agreement creates challenges for the GCF operating model in three key domains: capitalization, governance and guidance.
- Two emerging innovations could prove crucial in GCF resilience to fulfil its role in Paris Agreement implementation: (1) interlinkages with other UNFCCC bodies, especially the Technology Mechanism; and (2) engagement with non-Party stakeholders, especially private sector actors such as large US investors and financiers.
- There is also an emerging soft role for the GCF as interlocutor between policy-makers and non-Party actors to help bridge the communication divide that often plagues cross-sectoral interactions.
- This role could develop through: (a) the GCF tripartite interface between the Private Sector Facility, Direct Accredited Entities and National Designated Authorities; and (b) strengthened collaborations between the UNFCCC Technical and Financial Mechanisms.

Keywords: climate change law, climate finance, Green Climate Fund, climate governance, Paris Agreement, private sector

1. Introduction

The Green Climate Fund (GCF), established in 2010, represents a new kind of funding institution in the emerging field of climate finance governance. This is due to its direct creation by the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC), the equal representation of developed and developing countries on its Board, its pursuit of equal mitigation and adaptation financing, and its mandate to engage directly with the private sector.

However, the GCF could face challenges of operationalization not only due to its relatively new status as an international fund but also as a result of US President Trump's announcement that the United States (US) would withdraw from the Paris Agreement. The US became a ratifying party to the Paris Agreement in 2016 under the Administration of Barack Obama. In so doing, it became a contributor to the GCF and paid US\$1 billion to the GCF Trust Fund pursuant to its GCF Contribution Arrangement. The announced withdrawal from the Paris Agreement by the Trump Administration has now created several governance challenges for the GCF including: achieving sufficient capitalization of the Fund; ensuring workable Board-level governance of the Fund; and issues relating to oversight and guidance of the Fund by the COP¹.

This article analyzes these challenges in the next section. In sections 3 and 4, it explores how certain design features of the GCF could be utilized to strengthen its resilience or capacity to

sustain its operations, and fulfil its mandates in the face of financial or policy shocks, such as the withdrawal of pledged US funding. Specifically, we focus on two emerging areas that could prove crucial in enabling the GCF's role in the implementation of the Paris Agreement: first, interlinkages with other UNFCCC bodies, especially the Technology Mechanism; and second, engagement with non-Party stakeholders, especially cities and the private sector. The article concludes in Part 5 that a key challenge and opportunity for the GCF in both of these areas will be to help improve communication between public institutions, the private sector, and local actors in order to build trust, know-how and a project pipeline that can sustain the transition to a low carbon and climate-resilient world.

2. The Trump Administration and GCF Governance Challenges

On 1 June 2017, President Trump announced that the US would 'withdraw' from the Paris Agreement. Specifically, he announced that the US 'will cease all implementation of the non-binding Paris Accord and the draconian financial and economic burdens the agreement imposes on our country', including ending implementation of the US Nationally Determined Contribution (NDC) (The White House, 2017). Importantly, the US President's statement included a broad condemnation of the GCF, which he described as, among other things, "costing the United States a vast fortune", signalling a dramatic US policy and attitudinal change toward it.

This presents at least three challenges for the GCF: first, sufficient capitalization of the Fund; second, workable governance of the Fund at Board level; and third, oversight and guidance of the Fund by the UNFCCC COP. Each challenge is discussed in turn below.

2.1 Capitalization of the Fund

Under its 2016 Contribution Arrangement and 2017 addendum with the GCF, the US agreed to pay US\$3 billion into the GCF's Trust Fund 'subject to the availability of funds' (GCF 2016, par.1) of which \$1 billion was paid by the US under the Obama Administration.

Therefore, the US repudiation of its prior commitment has created a US\$2 billion gap in the GCF's finances. To put this in context, this US\$2 billion is deducted from just over US\$10 billion in signed pledges to the GCF (GCF 2018). The change of US policy may be particularly disruptive to the Private Sector Facility, given that the Contribution Arrangement included the US expectation that at least half of its contributions would support private sector activity (GCF 2016). Alongside the US, the other major GCF contributors are the European Union and Japan. No party has announced that it will cover the shortfall resulting from the US reneging on its funding pledge.

What recourse, if any, does the GCF have against the US for this apparent breach of agreement? A 'Contribution Arrangement' exists between the GCF and the US; however the vast majority of contributing countries to the GCF have signed a 'Contribution Agreement'. Agreements tend to be governed by the GCF Trust Fund Agreement (GCF 2016, par. 2), annexed to which are the Standard Provisions Applicable to the Contributions to the Green Climate Fund Trust Fund (Standard Provisions) (GCF 2015). The Standard Provisions provide that '[t]he Fund, the Trustee and the Contributors shall, to the extent possible, strive to resolve and settle promptly and amicably questions of interpretation and application of a Contribution Agreement and any disputes, controversy or claims arising out of or relating to any Contribution Agreement' (ibid, par 9.1). Where a 'dispute, controversy or claim' has not been settled in this manner, it 'shall be settled in accordance with the dispute resolution

mechanism set out in the applicable Contribution Agreement, if any such mechanism is so specified in that Contribution Agreement’ (ibid, par. 9.2). The apparent purpose of utilizing a ‘Contribution *Arrangement*’ designation in the case of the US is to reduce the legally binding effect of that document. For example, whilst the US Contribution Arrangement is governed by the Standard Provisions mentioned above, the US Contribution Arrangement specifies that all instances of the word ‘shall’ in the Standard Provisions are deemed to be ‘will’ for the purposes of the US Contribution Arrangement (GCF 2016, par. 9.1), which implies a lower standard of obligation for the US. Importantly, unlike most Contribution Agreements, the GCF-US Contribution Arrangement sets out no dispute resolution mechanism (in contrast, 20 Contribution Agreements provide for final and binding arbitration).² It therefore leaves the GCF without any specified recourse to adjudicatory proceedings to recover the missing US\$2 billion.

The GCF was established by the COP as an operating entity of the Financial Mechanism of the UNFCCC; its role in serving the Paris Agreement (as mandated by the COP in 2015) is additional and independent. Thus, it would be legally possible for a future US administration to resume GCF contributions as a party to the UNFCCC, even if it remained outside the Paris Agreement. Indeed, as discussed further below, three Belgian regional governments, none of which are parties to either the UNFCCC or Paris Agreement, have pledged contributions to the GCF. However, there is currently no indication that this would be the preferred policy of a future US administration.

2.2 Board-level Governance of the Fund

The GCF's Governing Instrument provides that the Fund 'will be governed and supervised by a Board that will have full responsibility for funding decisions' (UNFCCC 2011, par 5). In the context of UNFCCC finance, the 'unusually powerful' (Thompson, 2016, p.146) and autonomous nature of the GCF Board may be contrasted with the Adaptation Fund Board and the Global Environment Facility Council (GEF) (Kulovesi 2012). Whereas the GEF Council 'shall act in conformity with' the COP (GEF 2011, par. 15) and the AF Board is 'under the authority and guidance' of the COP (UNFCCC 2008, par. 4), the GCF Board receives only 'guidance' from the COP and has 'full responsibility for funding decisions' (GCF Governing Instrument, articles 5-6). The GCF Board has 24 members, equally composed of developing and developed countries, and decisions, including investment decisions, must be taken by consensus (UNFCCC 2011, paragraph 14). The Rules of Procedure of the Board, which supplement the Governing Instrument, provide that the Co-Chairs are responsible for all procedural matters, including 'putting questions to a vote if consensus is not reached' (GCF Board 2013a, paragraph 12). The GCF Secretariat has done some work on options for a Board voting system (GCF Board 2015a), but the Board is yet to adopt any such system. In practice, the absence of consensus has at times prevented the adoption of decisions, even in circumstances where there has been only one holdout. For example, in 2016 India blocked approval of a Pakistan-based project until new conditions were added (Sethi 2016).

Currently, the Board includes a US delegate, nominated as one of the representatives of developed countries, whose appointment runs until December 2018. Given the current US administration's stated hostility to the GCF, including the claim that the US contribution of \$1 billion included 'funds raided out of America's budget for the war against terrorism' (White House 2017), it is possible that a current or future US Board member will be instructed by the administration to frustrate the conduct of the Board's business, including by

blocking funding decisions. At the contentious July 2018 Board meeting, during which the Board was unable to find consensus to approve any new projects, the US representative called for a ‘donor-driven’ replenishment process (Darby 2018). This approach proved divisive given the institutional design of the GCF to achieve balance between donors and recipients and due to the US having reneged on the majority of its financial commitments to the GCF.

Could a US Board member acting in a disruptive manner be removed from the Board prior to the conclusion of the applicable term? The Governing Instrument provides only that ‘[t]he members of the Board and their alternates will be selected by their respective constituency or regional group within a constituency’ (UNFCCC 2011, paragraph 11). The Rules of Procedure add that ‘[a]ny replacement of the Board member or alternate member within a term shall be made and notified to the Secretariat by the developed or developing country Party or group of these that selected the Board member or alternate member’ (GCF Board 2013a, par 5). Therefore, the decision to replace an obstructive US Board member would rest with the developed country Parties to the UNFCCC as a group.

2.3 Oversight and guidance by the UNFCCC COP

Third, there is the potential challenge to the guidance provided to the GCF by the COP, which created the GCF and holds ultimate authority over it. US President Trump has stated that even while withdrawing from the Paris Agreement, the US would ‘begin negotiations to reenter either the Paris Accord or a really entirely new transaction on terms that are fair to the United States, its businesses, its workers, its people, its taxpayers’ (The White House 2017). This part of the President’s statement raises the prospect of American negotiators

participating actively in UNFCCC negotiations with the stated objective of fundamentally amending, or totally replacing, the Paris Agreement. It should be noted, however, that multiple governments responded to the US withdrawal statement by reaffirming their commitment to the Paris Agreement and stating that it is not open to renegotiation. Moreover, at the time of writing, there were no signs of the US Administration attempting to renegotiate the Paris Agreement, with the US delegation to the climate negotiations instead maintaining long-held technical positions (Jotzo et al, 2018).

The Governing Instrument provides that the GCF ‘will be accountable to and function under the guidance of the Conference of the Parties’ (UNFCCC 2011, par 4). Since the GCF’s establishment, the COP has regularly provided guidance on a broad range of matters (e.g. the Fund’s linkages to the Technology Mechanism, as discussed below), with the GCF Board taking up COP guidance in its decisions. Although the COP has occasionally adopted decisions over the clear objection of one or more Parties, this has been intensely controversial amongst Parties and is not a regular practice (Vogel 2014). In addition to the potential problem at GCF Board level, the US could also use its ability to block COP (and now the COP serving as the meeting of the Parties to the Paris Agreement or CMA) consensus decisions to thwart the provision of guidance to the GCF. A US ‘veto’ over GCF-related COP decisions can therefore be considered a realistic threat, which would last until a change of American policy, or in the case of the CMA, until US withdrawal becomes effective in 2020 .

3. Building Linkages Between the Financial Mechanism and the Technology Mechanism

The GCF faces these challenges in the context of an evolving governance structure that makes it tightly interwoven into the broader UNFCCC architecture. These interlinkages, including with other entities established by COP decisions and other climate finance institutions (Boisson de Chazournes 2015), present opportunities to strengthen the efficacy of the GCF in the face of challenges to its operating model. The developing collaboration with the UNFCCC's Technology Mechanism is one such opportunity, in particular as Technology Mechanism inputs can help to de-risk investments, make GCF frameworks and funding decisions more impactful and better align technology-relevant GCF investments with the mandate for a 'paradigm shift'. These opportunities are particularly significant following the withdrawal of promised US funding and as the replenishment process begins.

The Technology Mechanism was created in 2010, at the same time as the GCF was added as the second operating entity of the Financial Mechanism alongside the GEF. The Technology Mechanism is mandated to facilitate enhanced action on technology development and transfer for both mitigation and adaptation. It includes a 'policy arm', the Technology Executive Committee (TEC) which advises the COP and produces reports on technology matters, and an 'implementation arm', the Climate Technology Centre and Network (CTCN) which provides technical assistance to developing countries, inter alia. These innovations are very positive but have also made the UNFCCC framework of finance for climate technology more complex. Soon after the creation of the GCF and Technology Mechanism, scholars identified potential for the new finance and technology processes to work in tandem (Sarnoff 2011; Burleson 2012). The COP has attempted to address this through a series of decisions to enhance the linkages between the Technology Mechanism and Financial Mechanism and their respective bodies.

In its 2011 decision launching the GCF, the COP requested the GCF Board to collaborate with the Adaptation Committee, the TEC and other relevant UNFCCC thematic bodies to 'define linkages' between the GCF and these bodies (UNFCCC 2011, par 17). In 2012 the COP agreed to 'further elaborate', at a subsequent session, the linkages between the Convention's Technology Mechanism and Financial Mechanism (UNFCCC 2013a, par 62). In 2015, the COP recognized that 'definition and elaboration of linkages between the Technology Mechanism and the Financial Mechanism has the aim of ensuring financial resources for, and scaling up action on, technology development and transfer' (UNFCCC 2016a, par 6) and invited the GCF Board to provide recommendations on linkages to the COP and to consider ways to provide support for climate technology in developing countries (ibid pars 4, 10). The COP also requested the TEC, CTCN, GEF and GCF to continue to consult on and further elaborate linkages, which they are doing (ibid par 8; TEC 2016).

Importantly, the identification of an ongoing 'disconnect' between 'project developers and climate technology companies and financiers and investors' (UNFCCC 2016b, par 21) has spurred work under the UNFCCC to strengthen collaboration between the Convention's Technology Mechanism and Financial Mechanism, including the GCF. Bridging this gap between project developers and public and private finance is a key challenge. To this end, it has been suggested that the Technology Mechanism and Financial Mechanism entities work together to de-risk investments (TEC 2016, par 22(f)). The CTCN and GCF have been exploring a partnership along these lines (UNFCCC 2016c, par 88), and in 2017 the GCF and UN Environment (for the CTCN) exchanged letters agreeing to collaborate (GCF 2017b).

As the Technology and Financial Mechanisms have their own functioning networks of organizations to facilitate, respectively, technology assistance and the financing of mitigation and adaptation projects, building inter-network cooperation is being pursued at both international and national levels. At the international level, the starting point for this work on linkages has been the relationships between the governing bodies of the institutions. From its inception, the CTCN Advisory Board has included the Chair and Vice-Chair of the TEC and a representative from the GCF Board (UNFCCC 2013b, par 3). Representatives of the CTCN Advisory Board, the CTCN and (from 2015) the GCF have regularly attended TEC meetings. In 2016, the GCF Board decided to hold an annual meeting in conjunction with the COP 'in order to enhance cooperation and coherence of engagement between the GCF and [UNFCCC] thematic bodies', with the meeting to include the chairs of thematic bodies such as the TEC (GCF Board 2016a, par (e)).

At the national level, enhancing cooperation between national designated entities (NDEs, which are associated with the CTCN) and national designated authorities (NDAs, which are associated with the GCF as explained below) has emerged as a way to bring coherence to finance and technology processes within countries. In its key messages to COP 22 in 2016, the TEC called for stronger cooperation between national CTCN and GCF focal points (UNFCCC 2016c, 53). The COP subsequently reflected this position in its decisions (UNFCCC 2016d, par 16). Similarly, the GCF Board at its October 2016 meeting encouraged NDAs and focal points to 'coordinate with the Climate Technology Centre and Network's national designated entities in order to enhance cooperation' (GCF Board 2016b, par (e)).

In 2016, the COP further invited GCF NDAs and focal points to utilize the Readiness and Preparatory Support Programme (which provides funding for developing countries to engage

with the GCF and develop project proposals) to 'conduct technology needs assessments and develop technology action plans', and more generally invited developing countries to submit 'technology-related projects, including those resulting from technology needs assessments and from the technical assistance of the Climate Technology Centre and Network', to the GEF and GCF (UNFCCC 2016e, pars 6-7). At this time the COP invited the four entities to provide information on actions to strengthen linkages in their annual reports and agreed to further consider the matter in 2018. This activity illustrates the steps that can be taken to build coherence in the activities of transnational structures in distinct but related areas of climate policy. Further impetus for strengthening collaboration between the GCF and the Technology Mechanism has come from the independent review of the CTCN by consultants Ernst and Young, which 'encourages the CTCN, the GEF and the GCF to continue exploring how to further facilitate the provision of sustained funding for CTCN activities and enhance operational linkages between the organizations' (UNFCCC 2017, par 90). In summary, enhanced exchanges between the TEC and GCF Board can assist in clarifying the conceptual and policy bases for financing climate technology, while operational collaboration between the CTCN and GCF can enable more informed and more impactful investments in climate technology.

4. Non-Party Stakeholder Engagement with the GCF

In addition to deepening interlinkages between the GCF and other UNFCCC mechanisms, GCF resilience and impact can be strengthened by enhanced engagement with non-Party stakeholders, including cities and the private sector. Indeed, in the context of the US reneging on its pledge to the GCF and creating higher burdens for remaining countries, direct

engagement with a wider array of actors is required to ensure greater impact from pledged government funds.

4.1 UNFCCC Context and GCF Set-up

Following its adoption, the GCF's Governing Instrument was hailed as a 'progressive, forward-looking document', and the Fund itself a potential exemplar of an increasingly decentralised and responsive climate governance (Carlarne 2012 at 20-21). For the GCF to fulfil this potential, however, deep and ongoing engagement with the non-Party stakeholders that command both knowledge and finance will be necessary. Article 9.3 of the Paris Agreement exemplifies a traditional model of multilateral climate finance as being provided by developed country governments to developing country governments.³ While faithful to this model, the GCF is also mandated to develop other modalities and funding relationships, including engagement with governments at all levels and also with the private sector, including finance actors (GCF Board 2015b). This mandate is particularly important given the imprecision of Party obligations to capitalize the GCF (Fridahl et al 2014).

This enhanced engagement by and with non-Party actors is not specific to the GCF but is rather a defining characteristic of the broader Paris Agreement process and outcomes. It is embodied in the *Marrakech Partnership for Global Climate Action* which was launched in December 2016 by the first High-Level Champions to the Paris Agreement in conjunction with the UNFCCC Secretariat and the COP21 and COP22 Presidencies. The *Marrakech Partnership* specifically acknowledges that:

“...public and private entities ... have a key role to play in assisting governments to translate [Nationally Determined Contributions, or NDCs] into investment-ready vehicles as well as to scale up investment in infrastructure that delivers a range of benefits, including ones for addressing climate change in cities and communities” (COP22 2016 at 1).

The Partnership aims to facilitate cooperative climate action that focuses on ‘the delivery of finance, technology and capacity building in developing countries’ for both mitigation and adaptation by: regularly convening Party and non-Party actors to identify and address barriers to implementation of the Paris Agreement; showcasing successes and encouraging new initiatives at each COP; tracking progress of non-state actors’ initiatives through the Non-State Actor Zone for Climate Action (NAZCA); and reporting on achievements and options to the COP (ibid at 2-3).

Importantly, the GCF Governing Instrument acknowledges that investments at scale require private sector capital, and provides for a Private Sector Facility (PSF) that sits within the GCF Secretariat. Further, a Private Sector Advisory Group, comprised of Board members and business and civil society representatives, makes recommendations to the Board about how best to engage the private sector (GCF Board 2013b, Annex XIX). Initially, in 2010, strong emphasis was placed on engaging local (domestic) private sector actors in-country. However, this approach was widened to encourage investment engagement in developing countries by multinational corporations and other private sector actors based in developed countries (GCF Board 2013c).

In 2014, the COP requested the GCF Board to accelerate operationalization of the PSF through accreditation of entities with relevant experience of working with the private sector (UNFCCC 2014, par 9). In response, as discussed further below, a number of organisations were granted status as Accredited Entities (institutions which manage GCF-funded projects and programmes) in 2015. The Board also established pilot programmes on funding micro-, small- and medium-sized enterprise activities that are climate sensitive, with an allocation of US\$200 million, and on mobilizing funding at scale, with an allocation of up to US\$500 million (see also below).

In short, the objective of the PSF is to ‘fund and mobilize institutional investors and leverage GCF’s funds to encourage corporates to co-invest’ (GCF undated(e)). The PSF can be seen as the GCF’s major point of difference with preexisting climate finance institutions, and has been identified as probably the ‘highest added-value’ of the GCF in the perception of donors (De Sepibus 2015). Some developing country parties have also encouraged the GCF to develop private sector modalities (see, e.g, AOSIS 2017). To this end, the GCF seeks heightened engagement with pension funds, insurance companies, corporations, local and regional financial intermediaries, and the capital markets in its activities.

4.2 Specific Points of Interaction by Non-Party Actors with the GCF

There are three main ways in which non-Party actors can engage directly with GCF funding processes: philanthropically as donors to the GCF; structurally as Direct Accredited Entities; and strategically as co-financiers. Each is discussed in turn below. Prior to its operationalization, the GCF was identified as an instance of ‘private finance ... being increasingly integrated in the core activities of public multilateral funds’ (Vinuales 2014).

While this potential is arguably as yet unrealized, the developments discussed below indicate that the GCF is moving in this direction.

4.2.1 Philanthropically as Donors

The GCF Governing Instrument provides that ‘[t]he Fund may also receive financial inputs from a variety of other sources, public and private, including alternative sources’ (UNFCCC 2011, Art 30). Alongside government contributions, non-Parties can contribute directly to the Fund through its External Affairs division. At the time of writing, in addition to the US\$10.3 billion pledged by Party governments, US\$24.3 million have been pledged by three regional governments in Belgium; a further US\$1.3 million has been pledged by one municipal government, namely Paris (GCF, undated(f)). This contribution by Paris is highly significant as it demonstrates a precedent for potential sub-national funding from US cities and states despite the administration’s planned withdrawal from the Paris Agreement. Funding the GCF may be of particular interest to US states and cities with a history of proactive climate law and regulation, and/or familiarity with green finance and market mechanisms such as voluntary carbon trading schemes, for example, California, New York and Seattle (Mathiesen 2017). In addition, the GCF is encouraging private sector actors to donate to the Fund. However, none have done so to date.⁴ If philanthropy were to become a significant funding source for the GCF, it would raise questions of legitimacy and accountability that multilateral climate financing instruments have not had to address to date.

4.2.2 Structurally as Direct Accredited Entities

As of June 2018, only seven out of 59 Accredited Entities were private sector actors, including a mix of transnational and national commercial and investment banks, a US-based impact investment fund, and a Mongolian banking and financial services company. However, private sector entities account for a larger share of the institutions currently in the accreditation ‘pipeline’, that is, seeking accreditation but not yet accredited. No cities have yet become Accredited Entities despite that option being available in the GCF Governing Instrument.⁵

The remaining Accredited Entities comprise a mix of government and non-government organisations. Predominant entities are multilateral development banks such as the European Investment Bank (EIB) and the International Finance Corporation (IFC), and international organisations including various UN entities such as the World Meteorological Organization and UN Environment. Other types of organisation have been accredited in fewer numbers; they include government departments and funds such as the Ministry of Natural Resources of Rwanda and the Peruvian Trust Fund for National Parks and Protected Areas, and NGOs such as WWF.

There is broad agreement that the pool of Accredited Entities needs to be diversified. Some commentators have highlighted the need to include more national development banks and local government ministries to augment country ownership (Steele 2016). Others have suggested accreditation of more transnational commercial banks, impact investors, and private equity funds, using the logic that such actors can best mainstream green investments in the real economies of developing countries (Smith and Rai 2015). However, prioritising the accreditation of more private sector banks is not without criticism. Transnational commercial and investment banks tend to prefer large-scale investments due to lower

transaction costs, but these may not succeed in small island developing states and least developed countries where smaller-scale and local projects are more appropriate. In other words, such banks tend to prefer types of projects with which they are familiar but which are unlikely to be transformational (Rai 2016). This is further confirmed by research which suggests a significant ‘implementation gap’ for non-state actor initiatives in developing countries (Chan et al. 2018). Critics also highlight that many big banks have conflictual internal policies, such as continuing to finance fossil fuels, which run counter to GCF and Paris Agreement imperatives (e.g. Kumar 2015; Robinson-Tillett 2015).

Thus, diversification beyond big banks would be a positive step. Indeed, diversification ought to embrace entirely new categories of actor within the private sector. However, doing so may depend on resolving the current uncertainty over what kinds of entity are eligible for accreditation. In response to a request from the GCF Board, the GCF’s Accreditation Committee proposed the option of a ‘principles-based approach to accreditation’, with applicants to be assessed on the basis of (inter alia) ‘[a] record of deploying finance through open untied procurement’ and ‘[a] proven capacity to implement projects effectively’ (GCF Board 2017a, par 8). The Accreditation Committee also reported that some of its members recommended deeming some entities to be ‘ineligible’ for accreditation, including consultancies which are ‘unlikely to have a track record or capacity as implementing agencies’ and may be ‘better suited to partner as service providers or advisors to GCF-funded activities’ (GCF Board 2017a, par 9). In October 2017, the GCF Board decided to commence a review of the accreditation framework and tasked the GCF Secretariat to develop a framework revision proposal that ‘includes other modalities for institutions to work with the GCF’ (GCF Board 2017b). This review was ongoing at the time of writing. In our view, the most sensible approach will be for the GCF Board to consider which additional actors might

best help the Fund to fulfill its mandate to ‘promote the paradigm shift towards low-emission and climate-resilient development pathways’ (UNFCCC 2011, Art 2).

On this point, a little-remarked fact about the current list of Accredited Entities is its complete lack of private sector legal and regulatory specialists. Yet this omission is striking, given that a critical challenge for developing countries in accessing finance is to create an enabling legal and policy environment that can attract investment (see e.g. Gramkow and Anger-Kraavi 2018). As mentioned above, the GCF is mandated to help countries not just through increased financial flows for projects but also through financial support for building endogenous capacity. Thus, developing robust national legal and regulatory frameworks for the receipt of public climate finance (through, for example, a national climate fund), as well as proactively incentivising private investments from local and transnational actors (through, for example, domestic financial regulation and corporate and taxation legislation) will be critical. Indeed, some multilateral development banks are already moving on this issue. For example, under its Law and Policy Reform Program, the Asian Development Bank provides technical assistance to developing countries to support legal and institutional development and capacity strengthening for climate investments (Morita and Pak, 2018). Importantly, having legal and regulatory frameworks in place not only increases the economic and financial attractiveness of climate-related investments (eg tariff controls or tax credits) but also encourages investor confidence by reducing perceived regulatory and sovereign risks. Clearly, building that kind of capacity requires development of legal and regulatory expertise in-country. An important corollary of building legal capacity for regulatory frameworks is that this strengthens country ownership in financial processes, helping to address the concern that over-involvement by the private sector and/or financial institutions would devolve or contract out government engagement and thus undermine a country-driven approach.

In short, in order to facilitate legal and regulatory (capacity building) proposals for GCF funding, there is an argument for law firms and other regulatory and governance experts to become Accredited Entities, alongside financial institutions and actors.

4.2.3 Strategically as Co-financiers

A third entry point for non-Party engagement with the GCF is by the private sector providing co-finance for projects and programmes as mobilized and leveraged by the PSF.

By June 2018 the GCF had committed of US\$3.7 billion in total financing and 76 projects had been approved for funding, with public sector funding slightly greater than private sector funding (60% vs 40%) (GCF, undated(g)). Yet, although nearly half of GCF funding to date has come from the private sector, it has been either for mitigation-only or cross-cutting projects. As at March 2018 only one adaptation-only project had been privately funded.

This is particularly important for the objectives of the Fund and interlinkage. There is no doubt that public funding is crucial for adaptation projects given that their returns tend to be social and not financial. Community benefits – known as ‘social returns’ - of investments in areas such as airports, utilities, or seawalls, are typically outside the scope of private sector investment decision-making, and the long planning timeframes for major infrastructure – often amounting to several decades - present challenges for business case evaluations (Bowman 2015). Yet the statistics above raise the question of whether public money could be better leveraged by the GCF to incentivise private investment for adaptation through innovative approaches. This could provide new business opportunities and also highlight

climate-related risks that exist for the private sector (Pauw 2015). Some have argued that such innovation is imperative, not just for adaptation, but for projects across the board if the GCF is to reach its \$100 billion target (Michaelowa, Allen and Sha 2018). A potential innovation would be to increase the use of guarantees to de-risk investments. The GCF Portfolio Dashboard shows that grants and loans are the preferred GCF financial instruments with their use at 86% combined. In contrast, equity accounts for only 11%, and guarantees for only 3% of GCF financial instruments (across all projects) (GCF undated(g)). Given the importance of guarantees for de-risking investments, this is surprising. Certainly, a guarantee transfers project risk to government (and ultimately the taxpayer), so public guarantees add risks to government balance sheets which can be a deterrence to using them. However, that risk can be mitigated by conscientious legal design of the guarantee, for which legal and regulatory expertise is required. Arguably, addressing such barriers is part of the GCF's role.

By utilising guarantees and also encouraging more equity, the GCF could mobilise private investment in adaptation through support for research and development, financing technology, and facilitating insurance for climate-resilient infrastructure and agriculture (Steele 2016). Indeed, these options could create an entry point for engagement by commercial banks and insurance companies that could genuinely add value.

In addition to co-financing, in 2017, the GCF directly invited private sector applications for funding by launching a US\$500 million request for proposals (RFP). The RFP invited entities to 'propose projects and programmes that deploy private sector investment in support of mitigation and adaptation activity in developing countries' and which are 'designed to crowd in private sector investment that fits within national climate priorities' and 'at scale' (Cooper 2017).

This RFP demonstrates two positive developments in the GCF approach to private sector engagement. First, the RFP is open to private actors that are not yet accredited with the GCF. The reason is to attract more and different private sector GCF partners such as corporates and institutional investors. This is a step in the right direction for enhancing diversification of Accredited Entities. Second, proposals may incorporate requests for grants to support capacity building such as technical support, training, and regulatory framework development. Indeed, proposals will be evaluated on their proposed level of impact, which includes ‘regulatory reform or development’ to ‘prompt a positive change in the market or regulatory environment that will enable future investment into climate activity’ and also ‘institutional capacity building’ in ‘local markets for further investments in climate activity’ (GCF Board 2017c, par 7). Thus, legal and regulatory capacity building are identified by the GCF as core elements of desirable GCF projects/programmes. In this way, the GCF seeks to attract new high-impact projects/programmes as well as more varied private sector partners.

5. Conclusion

The planned US withdrawal from the Paris Agreement has created several governance challenges for the GCF, namely sufficient capitalization of the Fund, workable Board-level governance of the Fund, and oversight and guidance of the Fund by the UNFCCC COP. The funding challenge is already felt; whether the governance challenges are latent or realized will depend on the instructions by the administration to US representatives in the climate negotiations and on the GCF Board. Yet this article has contended that two emerging innovations could prove crucial in the face of these challenges to enable the GCF to fulfil its role in implementing the Paris Agreement. . First, interlinkages with other UNFCCC bodies,

especially the Technology Mechanism; and second, engagement with non-Party stakeholders, especially cities and the private sector.

Regarding the latter area of non-Party engagement, the GCF PSF aims to respond to a ‘significant market gap and an unmet demand for innovative approaches and financial instruments’ concerning the mobilisation of the private sector, especially in developing countries (GCF Board 2017c, par 3). This gap is particularly acute concerning adaptation, with limited public sector investment thus far resulting in ‘little to no leverage of private sector finance’ (ibid, par 7). In the context of the US reneging on its pledge to the GCF, and broader strain on public sector budgets in many developed countries, the attractions of direct engagement with the private sector are clear. By using GCF resources to leverage private sector investment, the GCF is able to achieve a greater impact from the funds pledged to it by governments. In addition, by reducing barriers to, and building the capacity of, private sector investment in developing countries, the GCF is able to broaden the base of climate finance. The GCF has been criticised for its excessively ‘state-centric governance’ (in contrast to ‘multi-stakeholder governance’) (Abbott and Gartner 2012). Deeper engagement with non-Party stakeholders as Accredited Entities and through the PSF may also serve to address this concern.

These dynamics could strengthen the resilience of the GCF and its project pipeline, in the face of disruptions such as the US renunciation of its funding pledge. In this context, the role of the private sector is both crucial and positive. Most large US investors and financiers, especially those that operate transnationally, do not support the administration’s putative withdrawal from the Paris Agreement. Indeed, investors and companies that together represent US\$2.5 trillion in assets under management have joined the *We Are Still In*

campaign, whereby over 1650 different American entities have declared their ongoing ‘support [for] climate action to meet the Paris Agreement’, including cities and states, finance actors such as pension fund CalPERS and insurer Allianz, and large corporations such as IBM, Google and Tesla (We are Still In, undated).⁷

Importantly, our analysis reveals that there is a new and clear role for the GCF through its engagement with non-Party actors, a role that is softer – but no less important - than the three hard intersection points provided in this article. That is, the GCF could be a key interlocutor between law- and policy-makers and private sector financiers. Playing this role could help bridge the divide amongst these key players by providing modalities of communication and know-how to overcome the connection issues that so often plague cross-sectoral interactions, and which some say ought to be the focus of future COPs (e.g. Callaghan and Tennant 2017). As this article has posited, a good place to start this soft process is through the tripartite interface between the GCF PSF, Direct Accredited Entities and NDAs within the GCF framework, and by continuing to strengthen interlinkages between the Technology and Financial Mechanisms within the broader UNFCCC matrix.

¹ The US administration’s announced withdrawal from the Paris Agreement cannot come into effect until November 2020 due to Article 28 of the Agreement, which provides that withdrawal will take three years from the date the Agreement gained legal force for the ratifying nation (being 4 November 2016) plus another year. However, as suggested by Brändlin (2017), the question of what will happen to the GCF in the interim pushes consideration of this issue into the present.

² Most Contribution Agreements specify a binding dispute resolution mechanism, e.g. Trust Fund Contribution Agreement among the Grand Duchy of Luxembourg, the Green Climate Fund, and the International Bank for Reconstruction and Development, serving as the interim trustee of the Green Climate Fund Trust Fund concerning the Green Climate Fund Trust Fund (MTO No. 069022), 10 March 2016, par. 10. On the role of arbitration in relation to both the Paris Agreement and the Green Climate Fund, see Levine, J., 2016. Climate Change Disputes: The PCA, The Paris Agreement and Prospects for Future Arbitrations. ACICA Review 35–39.]

³ Multilateral financing is only one form of climate finance. Overall, more climate finance is raised domestically than internationally, and more funding comes from private rather than public sector sources (CPI 2017).

⁴ In both 2017 and 2018, former New York mayor Michael Bloomberg announced that he would contribute funding to the UNFCCC Secretariat to make up for funding cuts by the US administration, but this funding is intended for UNFCCC Secretariat operations and not for the GCF (Bloomberg 2017; Bloomberg 2018).

⁵ Part of the reason may be that local authorities cannot meet the standards of the GCF in order to become accredited, which includes high fiduciary standards and social and environmental safeguards. For a deeper

discussion of cities and the GCF, see e.g. Junghans, L., Eckstein, D., Kreft, S., Syberg, M., Weischer, L. 2016. 'Going to town: How the Green Climate Fund can support a paradigm shift in cities', *Germanwatch*, <https://germanwatch.org/en/download/14845.pdf>

⁷ However there is a notable lack of American commercial and investment banks on the list. Undoubtedly their preference is to declare support for regulatory (not political) initiatives such as the Financial Stability Board's recommendations on climate-related corporate disclosures: *Statement of Support for the TCFD Recommendations and Supportive Quotes* (June 2017), <https://www.fsb-tcfd.org/statement-support-supporting-companies-june-2017/>

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